

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development)	
of Secondary Markets)	

To: Wireless Telecommunications Bureau

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP IN
SUPPORT OF PETITION FOR PARTIAL RECONSIDERATION AND/OR
CLARIFICATION FILED BY THE BLOOSTON LAW FIRM AND PETITION FOR
PARTIAL RECONSIDERATION FILED BY THE NATIONAL
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The Rural Telecommunications Group (“RTG”)¹ hereby submits comments in response to and in support of a Petition for Partial Reconsideration and/or Clarification filed by the Blooston Law Firm (“Blooston”) and a Petition for Partial Reconsideration filed by the National Telecommunications Cooperative Association, Inc. (“NTCA”) on December 29, 2003 in the above-captioned proceeding.² While RTG supports many of the measures adopted by the Federal Communications Commission (“FCC” or “Commission”) in its *Secondary Markets*

¹ RTG is an organized group of rural telecommunications service providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services to their subscribers. RTG’s members are affiliated with rural telephone companies and/or are small businesses serving or seeking to serve secondary, tertiary, and rural markets.

² Petition for Partial Reconsideration and/or Clarification of the Blooston Law Firm, WT Docket No. 00-230 (filed December 29, 2003)(“Blooston Petition”); Petition for Partial Reconsideration of the National Telecommunications Cooperative Association, WT Docket No. 00-230 (filed December 29, 2003)(“NTCA Petition”).

*Order*³, RTG agrees with Blooston and NTCA (collectively, “Petitioners”) that additional reconsideration and clarification of the Commission’s spectrum leasing rules is necessary to truly promote spectrum leasing in rural areas.⁴

Specifically, RTG supports requests by the Petitioners that the Commission: (1) clarify a licensee’s liability for regulatory violations of a spectrum lessee in the context of a *de facto* transfer lease;⁵ (2) provide flexibility in its enforcement of license construction and performance requirements when a licensee/lessor’s ability to meet these requirements is jeopardized by a lessee’s failure to adequately build-out;⁶ and (3) adopt meaningful measures to adequately protect a spectrum lessee in the event that the underlying license is cancelled or the licensee goes bankrupt.⁷

RTG agrees with Blooston’s assertion that the Commission’s current rules with regard to licensee liability and the ability for a licensee to be “left on the hook” should its lessee fail to build-out its leased portion of a larger geographic service area serves as a “significant disincentive” to spectrum leasing, potentially dissuading large and small companies from entering into such leasing arrangements.⁸ RTG urges the Commission to reconsider these provisions and clarify the obligations of lessors and lessees in the *de facto* transfer leasing context. Such clarification is critical to ensuring that rural companies, as potential lessors, will not be held “secondarily” responsible for the misdeeds of lessees whom rural companies have

³ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-230 (*rel.* October 6, 2003)(“*Secondary Markets Order*”)

⁴ *Id.*

⁵ Blooston Petition at 2; NTCA Petition at 2.

⁶ Blooston Petition at 9; NTCA Petition at 4.

⁷ Blooston Petition at 4; NTCA Petition at 3.

⁸ Blooston Petition at 3.

neither the time nor resources to continually monitor. Such clarification will eliminate a major disincentive to rural carriers' entering into spectrum leasing arrangements.

Similarly, without the establishment of additional bankruptcy protections in the context of spectrum leasing, a lessee currently providing valuable spectrum-based services will almost certainly lose access to such spectrum should its underlying spectrum lease be terminated by a bankruptcy court. In the rural context, it is unlikely that such discontinued services would be replaced, because the ability of small rural carriers to access substitute spectrum in such markets is extremely limited. RTG echoes Blooston's recommendation that, "in situations where a rural licensee has entered into a *bona fide* long-term lease agreement with a non-affiliated licensee, the Commission should recognize that the public interest is better served by preserving the ongoing spectrum use rights of the lessee and the continuity of service to rural providers."⁹ Accordingly, RTG supports the Petitioners' proposal that, when a licensee/lessor goes bankrupt, the Commission require the spectrum subject to such a lease to be partitioned or disaggregated to the lessee or require any subsequent licensee to recognize the lease rights associated with the original license.¹⁰ Should the Commission adopt such a proposal, it will eliminate another significant disincentive to rural companies seeking spectrum leases with major carriers, thus significantly enhancing the effect of its spectrum leasing rules in both large and small markets.

While RTG applauds the Commission for taking an important first step in allowing licensees to lease portions of their spectrum to eligible parties, the petitions filed by Blooston and NTCA highlight the reality that additional clarification is necessary to remove barriers that still inhibit the growth of secondary market transactions. RTG supports the petitions for

⁹ Blooston Petition at 6.

reconsideration and urges the Commission to move swiftly to adopt the proposals contained therein.

Respectfully submitted,

Rural Telecommunications Group

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¹⁰ *Id.*; NTCA Petition at 3.